No. 76-1370

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1976

MARCEL R. METHOT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner contends that the evidence was insufficient to support his conviction for failure to file an income tax return.

After a bench trial in the United States District Court for the Central District of California, petitioner was convicted of willfully failing to file an income tax return for 1971, in violation of 26 U.S.C. 7203 (Tr. 520-522).[1] The trial court suspended imposition of sentence, placed him on probation for three years, and fined him $10,000 (C.T. 172-173). The court of appeals affirmed (Pet. App. A).

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[1] "Tr." refers to the trial transcript. "C.T." refers to the clerk's transcript

Prior to 1970, petitioner, a chiropractor, filed the usual income tax returns. For 1970 and 1971, however, petitioner filed Forms 1040 (Govt. Exs. 2, 3) that did not report as income any paper dollars or checks received by petitioner, but did list (on p. 4 of each form) certain silver coins (Tr. 418-419, 519). The 1971 form (Govt. Ex. 3) listed 6,500 silver quarters, 150 silver half dollars and 750 silver dimes (Tr. 477).[2] It was not clear from petitioner's listing of those coins whether he intended to report them as income. No computation reducing them to dollars was shown (Govt. Ex. 3, p. 4; Tr. 491). Moreover, the form did not show the number of personal exemptions, any business expenses, nonbusiness deductions, or tax credits, or any entries for income (Tr. 460). The district court found that the form did not disclose to the government facts material to the determination of petitioner's tax liability (Tr. 518), and that the form filed by petitioner was not a return (Tr. 519).

In December 1971, the Internal Revenue Service notified petitioner that the document he had filed on April 15, 1971, did not constitute a valid return for 1970 (Tr. 341-346, 521). References to statutory and case authorities were enclosed with this notice (Tr. 521). Petitioner was notified of the legal requirements concerning the filing of tax returns and warned that noncompliance would subject him to prosecution under 26 U.S.C. 7203, a copy of which was attached to the letter (Tr. 521). The letter

[2]Petitioner claims to believe (Pet. 4) that paper money is not taxable as income because it is not redeemable in gold or silver. But the courts have uniformly rejected this position. See, *e.g.*, *United States* v. *Daly*, 481 F. 2d 28, 30 (C.A. 8), certiorari denied, 414 U.S. 1064; *United States* v. *Wangrud*, 533 F. 2d 495 (C.A. 9), certiorari denied, October 4, 1976 (No. 75-1520); cf. *Norman* v. *B. & O. R. Co.*, 294 U.S. 240, 302-306.

requested petitioner to file a tax return for 1970 on or before January 3, 1972, but petitioner never filed a proper return for 1970 (*ibid.*).

On April 15, 1972, petitioner again filed a document, similar to the one filed a year earlier, in which he reported no income received by check or federal reserve notes (Tr. 518-519). One of petitioner's employees testified that on a busy day in 1971 petitioner's gross receipts would range between $250 and $500 (Tr. 280-281). The gross income of petitioner and his wife, computed by the Internal Revenue Service on the bank deposits method, was $54,310 for 1971 (Tr. 318). Since California is a community property state, the Service concluded that only half that amount, or $27,155, was attributable to petitioner (*ibid.*).

Petitioner argues (Pet. 6-9) that the evidence was insufficient to support the verdict. But it is well established that a Form 1040 that gives no information from which a tax can be computed is not a return within the meaning of the Internal Revenue Code. See, *e.g.*, *Automobile Club* v. *Commissioner*, 353 U.S. 180, 187-188; *United States* v. *Daly*, 481 F. 2d 28, 29 (C.A. 8), certiorari denied, 414 U.S. 1064; *United States* v. *Porth*, 426 F. 2d 519, 523 (C.A. 10), certiorari denied, 400 U.S. 824; 26 U.S.C. 6011(a); 26 C.F.R. 1.6011-1(b); 10 Mertens, *Law of Federal Income Taxation*, §55.22 (1976 ed.).[3] Moreover, after receiving

[3]Petitioner seeks to distinguish (Pet. 8-9) *Porth* on the ground that there no financial or income information was supplied on the return, whereas here petitioner "carefully included on his returns the silver coins he had received as income" (Pet. 8). But petitioner's Form 1040 was fatally defective on its face, not only because it was obvious that only a small minority of petitioner's patients would pay him in coins, but because the form shows no personal exemptions, business expenses, nonbusiness deductions, or tax credits. Indeed, it is not even clear that petitioner intended to report the silver coins

a warning letter from the Internal Revenue Service (Govt. Ex. 58), petitioner persisted in his course of conduct, failing to file a proper return for either 1970 or 1971. The court of appeals therefore correctly held that the record amply supports the district court's finding that petitioner was not acting under a "good faith belief that the form filed satisfied the requirements of law."[4]

Finally, petitioner claims (Pet. 4, 7-8, 9) that he relied in good faith on the advice of counsel, but the attorney he refers to (Tr. 469) is a well-known tax protestor who also has been convicted for failure to file income tax returns. See *United States* v. *Daly*, 481 F. 2d 28 (C.A. 8), certiorari denied, 414 U.S. 1064. The district court evidently concluded that petitioner had not relied upon Daly's advice in good faith. This factually based conclusion was reasonable. In view of his own prosecution, Daly was not a disinterested party upon whom a claim of reliance on counsel could be properly based. See *Bisno* v. *United States*, 299 F. 2d 711, 719-720 (C.A. 9), certiorari denied, 370 U.S. 952.

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as income. The form therefore was of no value at all in the computation of petitioner's liability, and the district court was amply justified in concluding (Tr. 519) that it does not constitute a return within the meaning of 26 U.S.C. 6011(a). *Schroeder* v. *Commissioner*, 291 F. 2d 649, 654 (C.A. 8); *National Contracting Co.* v. *Commissioner*, 105 F. 2d 488, 491 (C.A. 8); *Houston* v. *Commissioner*, 38 T.C. 486, 491; *Sanders* v. *Commissioner*, 21 T.C. 1012, 1018, affirmed, 225 F. 2d 629 (C.A. 10); cf. *Zellerbach Co.* v. *Helvering*, 293 U.S. 172, 180; *Florsheim Bros.* v. *United States*, 280 U.S. 453, 462.

[4]Petitioner relies (Pet. 7) upon the fact that he was acquitted on Count 1, which charged a failure to file a return for 1970. The acquittal on Count 1 was based on the trial court's conclusion that when petitioner filed the Form 1040 for 1970 on April 15, 1971, he may have had a good faith misunderstanding of the law's requirements (Tr. 521). The court determined that any such possible misunderstanding was eliminated by the Service's letter of December 1971, which petitioner received before filing his Form 1040 for 1971.

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

MAY 1977.